IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22008 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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PREMNATH MOHANLAL RAJPUT(ADV) THRO BROTHER-PRINCE MOHANLAL - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BHUNESH C RUPERA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/12/2005

ORAL JUDGMENT

1.Premnath Mohanlal Rajput (Advocate), through his brother Prince Mohanlal Mehra, petitioner has filed

this habeas corpus petition under Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 15/9/2005 passed by the Police Commissioner, Ahmedabad and prayed that detenu may release from the jail. Petition was filed on 25/10/2005. On 28/10/2005, this Court (Coram:A.S.Dave, J) has issued rule which is returnable after four weeks. Hence, matter has been placed for hearing to this Court.

2.Mr.B.C.Rupera, learned counsel for the petitioner has invited my attention to the order of detention. It was stated that detenu was in jail on 30/8/2005 for some other offence committed by him. The authority has supplied grounds of detention to the petitioner in this behalf. The learned advocate has also invited my attention to the grounds given by the authority on 15/9/2005. In the grounds of detention, it is stated that petitioner has committed six offences which are as under:

1. Offence registered at Sardarnagar Police Station in connection with Criminal Case No.18 of 2003 dated 23/1/2003 under the provisions of Section 454, 457, 380

and 114 of IPC by which he has committed theft of Rs.17,000/-.

2. Offence registered at Sardarnagar Police Station in connection with Criminal Case No.37 of 2003 dated 11/2/2003 under the provisions of Section 454, 457, 380 and 114 of IPC by which he has committed theft of gold and silver ornaments valued at Rs.89,540/-.

3. Offence registered at Sardarnagar Police Station in connection with Criminal Case No.295 of 2004 dated 16/11/2004 under the provisions of Section 454, 457, 380 and 114 of IPC by which he has committed theft of gold and silver ornaments valued at Rs.85,000/-.

4. Offence registered at Sardarnagar Police Station in connection with Criminal Case No.123 of 2004 dated 10/5/2005 under the provisions of Section 457, 380 and 114 of IPC by which he has committed theft of gold and silver ornaments, cash, DVD player, wrist watch of titan company, total theft of about Rs.46,000/-.

5. Offence registered at Sardarnagar Police Station in connection with Criminal Case No.215 of 2005 dated

1/9/2005 under the provisions of Section 457, 380 and 114 of IPC by which he has committed theft of stereo tape valued at Rs.15,000/- and fifteen CD Cassates valued at Rs.450/-.

6. Offence registered at Sardarnagar Police Station in connection with Criminal Case No.216 of 2005 dated 1/9/2005 under the provisions of Section 457, 380 and 114 of IPC by which he has committed theft of eight silver coins valued at Rs.800/-, one sari valued at Rs.150/- and eleven Pent Pieces valued at Rs.1100/-.

3.The learned counsel for the petitioner submitted that it was also stated that petitioner was falling within the meaning of 'dangerous person' under the provisions of PASA Act and therefore, there is a breach of public order.

4.Mr.Rupera, learned counsel for the petitioner stated that even if all the allegations taken, then the detenu will not fall within the meaning of 'dangerous person'. There can be breach of law and order situation but not public order. For the same, the learned counsel has relied upon judgment in the case of Mustakmiya

Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, reported in 1995 2 GLR 1268. The learned counsel has also relied upon division bench judgment of this Court in case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21. The learned advocate has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta and judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000.

5. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has supported the order of detention on the basis of grounds stated in the order of detention and he has also filed affidavit in reply of Mr.K.R.Kaushik, Commissioner of Police, Ahmedabad City in this behalf. In the affidavit, it is stated that the authority has subjectively satisfied with the materials provided before passing the order of detention in this behalf.

6. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has

passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana and another division bench judgment of this Court (C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Arms Act along cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Arms Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities

disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000 and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the

petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Premnath Mohanlal Rajput (Advocate), detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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